

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF THE §
PETITION OF JAMES E. ALLEN § No. 269, 2010
FOR A WRIT OF MANDAMUS §

Submitted: May 28, 2010
Decided: June 28, 2010

Before **STEELE**, Chief Justice, **HOLLAND** and **RIDGELY**, Justices

ORDER

This 28th day of June 2010, it appears to the Court that:

(1) The petitioner, James E. Allen, seeks to invoke this Court's original jurisdiction to issue an extraordinary writ of mandamus¹ to compel the Superior Court to re-calculate his Level V time served, apply it to his current Level V sentence, and grant his motion for sentence modification. We find that Allen's petition manifestly fails to invoke the original jurisdiction of this Court. Accordingly, the petition must be dismissed.

(2) In August 2009, Allen pleaded guilty to Burglary in the Second Degree, Attempted Burglary in the Second Degree, and Conspiracy in the Second Degree. On the burglary conviction, Allen was sentenced to 8 years of Level V incarceration, to be suspended after 5 years for probation. On the attempted burglary conviction, he was sentenced to 8 years at Level V, to be suspended after 5 years for 2 years of probation. On the conspiracy

¹ Del. Const. art. IV, §11(6); Supr. Ct. R. 43.

conviction, he was sentenced to 2 years at Level V, to be suspended for probation. Allen did not file a direct appeal from his convictions.

(3) In November 2009 and again in April 2010, Allen filed motions for sentence modification in the Superior Court. The Superior Court denied both motions on the ground that Allen has been credited with all the Level V time to which he is entitled. Allen did not file appeals from those denials. Allen has now filed the instant petition for a writ of mandamus requesting this Court to compel the Superior Court to issue a new sentencing order crediting him with an additional 2,482 days of Level V time.

(4) A writ of mandamus is an extraordinary remedy issued by this Court to compel a trial court to perform a duty.² As a condition precedent to the issuance of the writ, the petitioner must demonstrate that a) he has a clear right to the performance of the duty; b) no other adequate remedy is available; and c) the trial court has arbitrarily failed or refused to perform its duty.³

(5) Allen has not demonstrated that he is entitled to mandamus relief. He has not shown that he has a clear right to the performance of a duty that the Superior Court has arbitrarily failed or refused to perform. Moreover, he has failed to show that appeals from the Superior Court's

² *In re Bordley*, 545 A.2d 619, 620 (Del. 1988).

³ *Id.*

denials of his previous motions would not have provided him with an adequate remedy. As such, his petition must be dismissed.

NOW, THEREFORE, IT IS ORDERED that Allen's petition for a writ of mandamus is DISMISSED.

BY THE COURT:

/s/ Myron T. Steele
Chief Justice